

**TAXPAYERS' BILL OF RIGHTS HEARING
FRANCHISE TAX BOARD
MINUTES
DECEMBER 13, 2001**

The Franchise Tax Board met in open session at 9:00 a.m. at the State Board of Equalization, 5901 Green Valley Circle, Room 207, Culver City, California. Present were Hon. Kathleen Connell, Marcus Allen Frishman, representing Hon. Claude Parrish, and Annette Porini representing Hon. Tim Timothy Gage.

Franchise Tax Board

Staff Participating:

Gerald H. Goldberg, Brian W. Toman, Donald L. Buxton, Debbie Newcomb, Claudette Romo.

Others Participating:

Kathryn Jaques, Richard E. V. Harris representing Complete Audit File Access and Spidell Publishing, Roland A. Boucher representing California Senior Legislature, Marvin Klotz, Albert Shifberg-Melcher representing California Society of Enrolled Agents, Maria Morrison of Ernst & Young.

Taxpayers' Bill of Rights Hearing

Chair Connell read the opening statement as required by law, and introduced Franchise Tax Board staff members who were present and able to respond to questions.

Kathryn M. Jaques representing herself

Ms. Jaques described circumstances in which the FTB had mailed notices of proposed assessments to taxpayers at addresses that the FTB knew or should have known were no longer valid. She also indicated concern when the hearing officer was advised by Legal Branch staff that the notices were valid for purposes of tolling the statute of limitations. Brian Toman, Chief Counsel, volunteered to look into the matter.

Ms. Jaques submitted written materials and offered to forward citations of additional Tax Court decisions on the matter.

Richard E. V. Harris

Complete Audit File Access. Mr. Harris requested a directive from the Board directing staff to provide a taxpayer with a complete copy of the taxpayer's audit file, excluding only such material as the FTB is statutorily prohibited from releasing.

Gerald Goldberg, Executive Officer, advised the Board that years ago giving any portion of audit work papers to a taxpayer was simply not done. Over time, however, the department has been providing more and more information. Today, the department is actually hoping to provide nearly everything that's in the audit work papers to taxpayers.

There's also an issue of balance between the taxpayer's interest and the potential interest of the state in the event of litigation. Mr. Goldberg also explained in detail the continuing concern with regard to exactly how much of what is in the audit work papers ought to be released to a taxpayer. Mr. Toman also advised the Board that certain information in an audit file such as audit selection criteria and process information is confidential and protectable as a matter of law.

Mr. Harris also objected to alleged abuse of the deliberative process grounds for not disclosing requested information and brought the Board's attention to material posted on the website of Hon. Dean Andal, member, Board of Equalization, entitled "FTB's Policy Contrary to Law."

Mr. Harris submitted written materials.

Public Records Act. Mr. Harris reminded the Board of its direction to staff in December 2000 concerning the handling of California Public Records Act requests and, in particular, the identification of matters withheld and the basis for releasing the information. Mr. Harris suggested that staff was not complying with the Board's direction.

Mr. Goldberg told the Board that he believes no staff member is ignoring the direction of the Board. The more likely problem is a matter of interpretation. He also advised the Board that staff is currently in the throes of a review of the entire disclosure process. The review is expected to provide specific recommendations to senior management. If staff is not complying with directives, additional training may be necessary. However, there are likely to be a combination of things that provide less than completely satisfactory results.

Chair Connell suggested that staff update the Board next year on the progress of this effort.

Mr. Harris submitted written materials.

Roland Boucher Representing the California Senior Legislature

Mr. Roland Boucher asked the Board to allow seniors that are 65 or over to use the short tax form. Mr. Boucher also described his efforts to allow seniors to file short federal returns and thanked the Chair for her efforts in creating the Form 540 2EZ. Mr. Boucher indicated some resistance in the federal government in further simplifying federal returns for senior taxpayers. Mr. Boucher also addressed several bills enacted or still pending in the Legislature to simplify the tax burden for seniors, i.e., AB 35, AB 1370, and SB 831.

Mr. Boucher submitted written materials.

Marvin Klotz, EA

Mr. Marvin Klotz, EA, advised the Board that section 17145 of the Revenue and Taxation Code violates the United States Constitution in that it limits the tax-free treatment of exempt interest dividends paid by a regulated investment company to those that hold at least 50 percent of its assets in federal securities. Mr. Klotz suggested that, based on the case of Sandra Brown, all dividends from a regulated investment company attributable to federal interest should be excluded from state taxation.

Mr. Toman advised the Board that the California constitution requires the Franchise Tax Board to enforce section 17145 until an appellate court has determined that the statute is invalid. No appellate court has invalidated section 17145 of the Revenue and Taxation Code. Mr. Klotz asked the Board to support legislation to repeal section 17145, and Chair Connell indicated her interest in doing that.

Mr. Klotz submitted written materials.

Al Shifberg –Mencher Representing California Society of Enrolled Agents, Spidell Publishing, and Gina Rodriquez

Pension Conformity. Mr. Shifberg-Mencher, on behalf of the California Society of Enrolled Agents, expressed support for efforts to conform to recent changes in federal tax treatment of pensions, deferred compensation, qualified tuition plans, and education savings accounts. Mr. Shifberg-Mencher addressed several concerns related to the lack of conformity with the federal changes. The Chair indicated that a legislative hearing was scheduled for early in 2002. Mr. Goldberg expressed optimism that conforming legislation in some form would be enacted in 2002.

Use Tax. Mr. Shifberg-Mencher, on behalf of Spidell Publishing, recommended that a line be added to the Form 540 to enable a taxpayer to declare and pay use taxes. Mr. Goldberg indicated that periodically this issue has been examined. Previously the Board had examined the issue and, after consultation with the Board of Equalization, declined to add a line to the income tax return for this purpose.

Teacher Retention Tax Credit. Mr. Shifberg-Mencher, on behalf of Spidell Publishing, addressed a technical matter with respect to the ability of a teacher to use service as a teacher in another state for purposes of the teacher retention credit under the Revenue and Taxation Code. It appeared to all concerned to be a housekeeping issue that could be addressed with corrective legislation.

Mr. Shifberg-Mencher submitted written materials.

Maria Morrison of Ernest & Young

Ms. Morrison requested clarification of several press releases issued by the Franchise Tax Board in September and October concerning administrative relief for those taxpayers

affected by the terrorist attacks of September 11th, 2001. In particular, she inquired as to whether there was anything more definitive, whether the relief addressed in those press releases applied to taxpayers that use a fiscal accounting period, and if the relief provided by the Franchise Tax Board would be comparable to the relief provided by the Internal Revenue Service. Mr. Goldberg assured Ms. Morrison that the Franchise Tax Board would work very closely with all affected taxpayers and give them whatever relief they feel they need.

The meeting adjourned at 10:30 a.m.

Board Secretary

Date